

103D CONGRESS
1ST SESSION

S. 301

To revive and strengthen the “Super 301” authority of the United States Trade Representative to eliminate unfair trade barriers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 3 (legislative day, JANUARY 5), 1993

Mr. DASCHLE (for himself, Mr. LEVIN, and Mr. JOHNSTON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To revive and strengthen the “Super 301” authority of the United States Trade Representative to eliminate unfair trade barriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair Trade Enforce-
5 ment Act of 1993”.

6 **SEC. 2. PERMANENT STATUS OF “SUPER 301” PROGRAM;**

7 **MANDATORY PRIORITY PRACTICES.**

8 (a) IN GENERAL.—Section 310 of the Trade Act of
9 1974 (19 U.S.C. 2420) is amended by striking subsections

1 (a) and (b), by redesignating subsections (c) and (d) as
2 subsections (e) and (f), respectively, and by inserting be-
3 fore subsection (e), as redesignated, the following new sub-
4 sections:

5 “(a) MANDATORY IDENTIFICATION.—

6 “(1) IN GENERAL.—By not later than 60 days
7 after the date in any calendar year on which the re-
8 port required under section 181(b) is submitted to
9 the appropriate congressional committees, the Trade
10 Representative shall identify priority practices de-
11 scribed in paragraph (2) or (3) of this subsection.

12 “(2) IDENTIFICATION OF PRIORITY PRAC-
13 TICES.—The Trade Representative shall identify as
14 a priority practice any act, policy, or practice speci-
15 fied under section 181(a)(1), and any other major
16 barrier and trade distorting practice, the elimination
17 of which is likely to have the most significant poten-
18 tial to increase United States exports, either directly
19 or through the establishment of a beneficial prece-
20 dent.

21 “(3) IDENTIFICATION OF SPECIFIC PRIORITY
22 PRACTICES.—

23 “(A) GENERAL RULE.—The priority prac-
24 tices described in paragraph (2), shall include—

1 “(i) major barriers and trade distort-
2 ing practices in the agricultural, manufac-
3 turing, and services sectors; and

4 “(ii) if for any calendar year the Unit-
5 ed States merchandise trade balance (ex-
6 cluding trade petroleum imports) was in
7 deficit, the major barriers and trade dis-
8 torting practices of each foreign country
9 that—

10 “(I) accounted for not less than
11 15 percent of such deficit, and

12 “(II) had a global current ac-
13 count surplus for such year in an
14 amount equal to or greater than the
15 amount of the United States’ deficit
16 with the foreign country.

17 “(B) EXCEPTION WHERE CERTIFICATION
18 MADE.—The Trade Representative shall not be
19 required to identify practices with respect to a
20 sector described in subparagraph (A)(i), if the
21 Trade Representative certifies to the Congress
22 for any calendar year that major barriers and
23 trade distorting practices do not exist or have
24 been eliminated with respect to such sector.

1 “(4) GUIDELINES.—The priority practices iden-
2 tified by the Trade Representative under this section
3 shall reflect—

4 “(A) the international competitive position
5 and export potential of United States products
6 and services,

7 “(B) circumstances in which the sale of a
8 small quantity of a product or service may be
9 more significant than its value,

10 “(C) circumstances in which the practice
11 has the effect of imposing a total or near total
12 barrier to the importation of foreign goods or
13 services, and

14 “(D) the measurable medium-term and
15 long-term implications of Government procure-
16 ment commitments to United States exporters.

17 “(b) REPORT.—

18 “(1) LIST OF PRIORITY PRACTICES.—At the
19 same time the identification is made under sub-
20 section (a), the Trade Representative shall submit to
21 the Committee on Finance of the Senate and to the
22 Committee on Ways and Means of the House of
23 Representatives, and shall publish in the Federal
24 Register, a report which lists—

1 “(A) the priority practices identified under
2 subsection (a), and

3 “(B) the amount estimated under para-
4 graph (2) with respect to each such priority
5 practice.

6 “(2) ESTIMATE OF LOST EXPORTS.—The
7 amount estimated under this paragraph is the total
8 amount by which United States exports of goods or
9 services to each foreign country which has a priority
10 practice identified under subsection (a) would have
11 increased during the preceding calendar year if the
12 priority practices of such country did not exist. For
13 purposes of the preceding sentence, the Trade Rep-
14 resentative may use the estimates made under sec-
15 tion 181 to the extent appropriate.

16 “(c) INITIATION OF INVESTIGATION.—

17 “(1) IN GENERAL.—The Trade Representative
18 shall initiate an investigation under section 302(d),
19 and consultations under section 303(a), with respect
20 to each priority practice identified under subsection
21 (a) or with respect to each priority practice to which
22 a resolution described in subsection (d) applies.

23 “(2) TIMETABLE OF TRADE REPRESENTA-
24 TIVE.—Not later than 21 days after the date a re-
25 port is submitted under subsection (b), the Trade

1 Representative shall submit to the appropriate con-
2 gressional committees a timetable for initiating and
3 completing the investigation and consultations with
4 respect to each priority practice identified under
5 subsection (a) or to which a resolution described in
6 subsection (d) applies.

7 “(d) MANDATORY INVESTIGATION INITIATED BY
8 CONGRESS.—

9 “(1) RESOLUTION BY COMMITTEE.—Upon the
10 adoption by either the Committee on Ways and
11 Means of the House of Representatives or the Com-
12 mittee on Finance of the Senate of a resolution
13 that—

14 “(A) describes a priority practice of a for-
15 eign country, and

16 “(B) states that it is the opinion of the
17 Committee that such priority practice is an act,
18 policy, or practice that is described in section
19 301,

20 the Trade Representative shall initiate action under
21 subsection (c).

22 “(2) JOINT RESOLUTION.—Upon enactment of
23 a joint resolution described in paragraph (3), the
24 Trade Representative shall initiate action under sub-
25 section (c).

1 “(3) JOINT RESOLUTION DESCRIBED.—A reso-
2 lution is described in this paragraph if it is a joint
3 resolution—

4 “(A) which is introduced in either the Sen-
5 ate or the House of Representatives not later
6 than 15 days after the date on which the Trade
7 Representative submits the report required by
8 subsection (b),

9 “(B) which is sponsored by not less than
10 one-fourth of the duly elected and sworn Mem-
11 bers of the House in which it is introduced, and

12 “(C) the matter after the resolving clause
13 of which contains the name of the foreign coun-
14 try, the practices of such country identified as
15 priority practices, and a finding that elimi-
16 nation of such priority practices is likely to
17 have significant potential to increase United
18 States exports, either directly or through estab-
19 lishment of a beneficial precedent.

20 “(4) APPLICATION OF CONGRESSIONAL ‘FAST
21 TRACK’ PROCEDURES TO JOINT RESOLUTION.—

22 “(A) Except as provided in subparagraph
23 (B), the provisions of section 152 (other than
24 subsection (a)) shall apply to a joint resolution
25 described in paragraph (3).

1 “(B) For purposes of this paragraph—

2 “(i) section 152(d)(2) shall be applied
3 by substituting ‘10’ for ‘20’,

4 “(ii) section 152(e)(2) shall be applied
5 by substituting ‘10’ for ‘20’,

6 “(iii) section 152(f)(2) shall be ap-
7 plied by substituting ‘text of the joint reso-
8 lution described in section 310(d)(3)’ for
9 ‘texts of joint resolutions described in sec-
10 tion 152 or 153(a)’, and

11 “(iv) section 152(f)(3) shall be applied
12 by substituting ‘joint resolution described
13 in section 310(d)(3)’ for ‘joint resolution
14 described in subsection (a)(2)(B)’.

15 “(5) RULEMAKING POWER.—Paragraph (4) is
16 enacted by Congress—

17 “(A) as an exercise of the rulemaking
18 power of the House of Representatives and the
19 Senate, respectively, and as such it is deemed
20 a part of the rules of each House, respectively,
21 and such procedures supersede other rules only
22 to the extent that they are inconsistent with
23 such other rules; and

24 “(B) with full recognition of the constitu-
25 tional right of either House to change the rules

1 (so far as relating to the procedure of that
2 House) at any time, in the same manner, and
3 to the same extent as in the case of any other
4 rule of that House.”.

5 (b) CONFORMING AMENDMENTS.—

6 (1) Subsection (e) of section 310 of the Trade
7 Act of 1974, as redesignated by subsection (a), is
8 amended—

9 (A) by striking “In the consultations” and
10 all that follows through the first comma in
11 paragraph (1) and inserting “In the consulta-
12 tions with a foreign country which has a prior-
13 ity practice identified under subsection (a) or
14 (d),”;

15 (B) by striking “subsection (a)(1)(A)” in
16 subparagraph (A) of paragraph (1) and insert-
17 ing “this section”; and

18 (C) by striking “subsection (b)” in para-
19 graph (2) and inserting “this section”.

20 (2) Paragraph (1) of section 310(f) of such Act,
21 as redesignated by subsection (a), is amended to
22 read as follows:

23 “(1) On the date in each calendar year on
24 which the report the Trade Representative is re-
25 quired to submit under subsection (b), the Trade

1 Representative shall also submit a report which in-
2 cludes—

3 “(A) revised estimates of the total amount
4 determined under subsection (b)(2) for each
5 priority practice that has been identified under
6 this section,

7 “(B) evidence that demonstrates, in the
8 form of increased United States exports to each
9 foreign country with respect to which a priority
10 practice has been identified during the previous
11 calendar year—

12 “(i) in the case of a foreign country
13 that has entered into an agreement de-
14 scribed in subsection (e)(1), substantial
15 progress during each year within the 3-
16 year period described in subsection
17 (e)(1)(A) toward the goal of eliminating
18 the priority practice identified under this
19 section by the close of such 3-year period,
20 and

21 “(ii) in the case of a country which
22 has not entered into (or has not complied
23 with) an agreement described in subsection
24 (e)(1), the elimination of such practices,
25 and

1 “(C) to the extent that the evidence de-
2 scribed in subparagraph (B) cannot be pro-
3 vided, any actions that have been taken by the
4 Trade Representative under section 301 with
5 respect to such priority practices of each such
6 foreign country.”.

7 (3) Paragraph (2) of section 310(f) of such Act,
8 as redesignated by subsection (a), is amended—

9 (A) by striking “subsection (a)(1)(A)”
10 each place it appears and inserting “this sec-
11 tion”; and

12 (B) by striking “in any calendar year be-
13 ginning after 1993”.

14 (4) Section 303 of such Act (19 U.S.C. 2413)
15 is amended—

16 (A) by inserting “or pursuant to the time-
17 table prescribed by section 310(c)(2)” in para-
18 graph (1) of subsection (a) after “section 302”;
19 and

20 (B) by adding at the end of subsection (b)
21 the following flush sentence:

22 “This subsection shall not apply to any consultation in-
23 volving a priority practice identified under section 310.”.

1 (5) Section 305(a)(1) of such Act (19 U.S.C.
2 2415(a)(1)) is amended by inserting “and section
3 301(e)” after “in paragraph (2)”.

4 (6)(A) The heading for section 310 of such Act
5 (19 U.S.C. 2420) is amended to read as follows:

6 **“SEC. 310. MANDATORY IDENTIFICATION OF PRIORITY**
7 **PRACTICES.”.**

8 (B) The table of contents of chapter 1 of title
9 III of such Act is amended by striking the item re-
10 lating to section 310 and inserting the following:

“Sec. 310. Mandatory identification of priority practices.”.

11 **SEC. 3. INVESTIGATIONS, DETERMINATIONS, AND MANDA-**
12 **TORY ACTIONS.**

13 (a) INVESTIGATIONS.—Section 302 of the Trade Act
14 of 1974 (19 U.S.C. 2412) is amended by adding at the
15 end thereof the following new subsection:

16 “(d) INITIATION OF INVESTIGATION FOR SECTION
17 310 PRIORITY PRACTICES.—Upon the identification of a
18 priority practice under section 310(a) or the adoption of
19 a resolution under section 310(d), the Trade Representa-
20 tive shall initiate an investigation under this chapter (in
21 accordance with the timetable submitted under section
22 310(c)) and shall publish a notice of such investigation
23 in the Federal Register.”.

24 (b) DETERMINATIONS BY TRADE REPRESENTA-
25 TIVE.—Section 304(a) of such Act (19 U.S.C. 2414(a))

1 is amended by redesignating paragraph (4) as paragraph
2 (5) and by inserting after paragraph (3) the following new
3 paragraph:

4 “(4)(A) If an investigation is initiated under
5 this chapter by reason of section 302(d), the Trade
6 Representative shall make an affirmative determina-
7 tion under subparagraph (A) of paragraph (1)
8 that—

9 “(i) the rights to which the United States
10 is entitled under any trade agreement are being
11 denied, or

12 “(ii) an act, policy, or practice described in
13 section 301(a)(1)(B) exists.

14 “(B) Such determination shall be made on or
15 before—

16 “(i) in the case of an investigation which
17 does not involve a trade agreement, the date
18 which is 12 months after the date on which a
19 timetable is submitted under section 310(c)(2),
20 or

21 “(ii) in the case of an investigation which
22 involves a trade agreement (other than an
23 agreement on subsidies and countervailing
24 measures described in section 2(c)(5) of the

1 Trade Agreements Act of 1979), the earlier
2 of—

3 “(I) the date that is 30 days after the
4 date on which the dispute settlement pro-
5 cedure is concluded, or

6 “(II) the date that is 18 months after
7 the date on which a timetable is submitted
8 under section 310(c)(2).”.

9 **SEC. 4. ALTERNATIVE PLAN TO ELIMINATE PRIORITY**
10 **PRACTICES.**

11 Section 301 of the Trade Act of 1974 (19 U.S.C.
12 2411) is amended—

13 (1) by striking “If” in paragraph (1) of sub-
14 section (a) and inserting “Except as provided in sub-
15 section (e), if”;

16 (2) by inserting “(or upon a determination
17 under section 304(a)(4))” in paragraph (1) of sub-
18 section (a) after “section 304(a)(1)”;

19 (3) by adding at the end of paragraph (2) of
20 subsection (a) the following flush sentence:

21 “In the case of an affirmative determination under
22 section 304(a)(4) involving a priority practice identi-
23 fied under section 310, this paragraph shall not
24 apply unless a joint resolution (described in sub-

1 section (e)) permits such application and is enacted
2 into law.”; and

3 (4) by adding at the end thereof the following
4 new subsection:

5 “(e) ALTERNATIVE PLAN FOR SECTION 310 PRIOR-
6 ITY PRACTICES.—

7 “(1) In the case of a priority practice identified
8 under section 310 with respect to which an affirma-
9 tive determination is made under section 304(a)(4),
10 the President shall, not later than 30 days after the
11 date of such determination, direct the Trade Rep-
12 resentative to take action under subsection (a)(1) or
13 submit to the Congress an alternative plan described
14 in paragraph (2).

15 “(2) An alternative plan is described in this
16 paragraph if it—

17 “(A) provides in detail the action the
18 Trade Representative plans to take to eliminate
19 a priority practice, including—

20 “(i) any reciprocal limitation, restric-
21 tion, or action of the kind referred to in
22 paragraph (3),

23 “(ii) the period of time that will be re-
24 quired to implement fully the plan and the
25 specific interim results that should be

1 achieved under the plan from time-to-time
2 during that period, and

3 “(iii) the number of jobs to be created
4 and the estimated increase in exports re-
5 sulting from implementation of the plan;

6 “(B) cites the legal authorities for taking
7 the measures contemplated by such plan;

8 “(C) contains, if the President considers
9 that statutory authority is necessary for the im-
10 plementation of any part of the alternative plan
11 (including the implementation of any reciprocal
12 limitation, restriction, or action referred to in
13 paragraph (3)), appropriate suggested legisla-
14 tive proposals; and

15 “(D) states the reasons why the alternative
16 plan is preferable to taking action under sub-
17 section (a)(1).

18 “(3) An alternative plan shall provide, in the
19 case of unsatisfactory progress by a foreign country
20 in eliminating the priority practice, for the imple-
21 mentation, for such time as may be appropriate, by
22 the President of a restriction, limitation, or other ac-
23 tion that is reciprocal in scope and effect to such
24 priority practice.

1 “(4) If the President transmits an alternative
2 plan to the Congress under paragraph (2) and a
3 joint resolution described in paragraph (6) is not en-
4 acted within the 60-day period beginning on the date
5 on which the alternative plan is transmitted, the
6 Trade Representative shall take action under sub-
7 section (a)(1).

8 “(5) If the President transmits an alternative
9 plan to Congress under paragraph (2) and a joint
10 resolution described in paragraph (6) is enacted
11 within the 60-day period beginning on the date on
12 which the alternative plan is transmitted, the alter-
13 native plan shall take effect and the President shall
14 direct the Trade Representative to implement appro-
15 priate action in accordance with the terms of such
16 plan to obtain the elimination of the priority prac-
17 tice.

18 “(6) A joint resolution is described in this para-
19 graph if it is a joint resolution—

20 “(A) which is introduced in either the
21 House or the Senate not later than 15 days
22 after the date the President submits an alter-
23 native plan to Congress under paragraph (2),
24 and

1 “(B) the matter after the resolving clause
2 of which is as follows: ‘That the Congress ap-
3 proves the alternative plan transmitted under
4 section 301(e) of the Trade Act of 1974 to the
5 Congress on .’, the blank space being
6 filled with the appropriate date.

7 “(7)(A) Except as provided in subparagraph
8 (B), the provisions of section 152 (other than sub-
9 section (a)) shall apply to a joint resolution de-
10 scribed in paragraph (6).

11 “(B) For purposes of this paragraph—

12 “(i) section 152(f)(2) shall be applied by
13 substituting ‘text of the joint resolution de-
14 scribed in section 301(e)(6)’ for ‘texts of joint
15 resolutions described in section 152 or 153(a)’,
16 and

17 “(ii) section 152(f)(3) shall be applied by
18 substituting ‘joint resolution described in sec-
19 tion 301(e)(6)’ for ‘joint resolution described in
20 subsection (a)(2)(B)’.

21 “(8) Paragraph (7) is enacted by Congress—

22 “(A) as an exercise of the rulemaking
23 power of the House of Representatives and the
24 Senate, respectively, and as such it is deemed
25 a part of the rules of each House, respectively,

1 and such procedures supersede other rules only
2 to the extent that they are inconsistent with
3 such other rules; and

4 “(B) with full recognition of the constitu-
5 tional right of either House to change the rules
6 (so far as relating to the procedure of that
7 House) at any time, in the same manner, and
8 to the same extent as in the case of any other
9 rule of that House.

10 “(9) For purposes of paragraphs (4) and (5)
11 the 60-day period shall be computed by excluding—

12 “(A) the days in which either House is not
13 in session because of an adjournment of more
14 than 3 days to a day certain or an adjournment
15 of the Congress sine die, and

16 “(B) any Saturday and Sunday, not ex-
17 cluded under subparagraph (A), when either
18 House is not in session.”.

19 **SEC. 5. ESTIMATION OF BARRIERS TO MARKET ACCESS.**

20 Section 181(a)(1)(C) of the Trade Act of 1974 (19
21 U.S.C. 2241(a)(1)(C)) is amended by striking “, if
22 feasible,”.

1 **SEC. 6. ACTIONS BY THE UNITED STATES TRADE REP-**
2 **RESENTATIVE.**

3 (a) MANDATORY ACTION.—Section 301(a)(1)(B)(ii)
4 of the Trade Act of 1974 (19 U.S.C. 2411(a)(1)(B)(ii))
5 is amended by inserting “(or threatens to burden or re-
6 strict)” after “restricts”.

7 (b) DISCRETIONARY ACTION.—Section 301(b)(1) of
8 such Act (19 U.S.C. 2411(b)(1)) is amended by inserting
9 “(or threatens to burden or restrict)” after “restricts”.

10 (c) DEFINITIONS.—Section 301(d) of such Act (19
11 U.S.C. 2411(d)) is amended by adding at the end thereof
12 the following new paragraph:

13 “(10) An act, policy, or practice that threatens
14 to burden or restrict United States commerce is an
15 act, policy, or practice that does not currently bur-
16 den or restrict United States commerce, but, if not
17 corrected, is reasonably expected to burden or re-
18 strict United States commerce.”.

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